

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

MAY 15, 2009

CLERK, U.S. DISTRICT COURT
RICHMOND, VA

BRIAN W. PATTON,

Petitioner,

v.

Civil Action No. 3:09CV231

UNKNOWN,

Respondent.

MEMORANDUM OPINION

Brian Patton, a Virginia prisoner, has submitted a motion asking for an extension of time in which to file a motion under 28 U.S.C. § 2254.¹ Federal courts, however, lack jurisdiction to consider the timeliness of habeas petitions "until a petition is actually filed." United States v. Leon, 203 F.3d 162, 164 (2d Cir. 2000) (holding that no case or controversy existed before § 2255 motion was actually filed); see also United States v. White, 257 F. App'x 608, 609 (4th Cir. 2007) (Nos. 07-6513 & 07-7095), available at 2007 WL 4302418, at *1; Gregory v. Bassett, No. 3:07cv790, 2009 WL 455267, at *2 (E.D. Va. Feb. 23, 2009). Because a § 2254 petition did not accompany Patton's motion for an extension of time and because the motion did not contain any cognizable claims for habeas relief, Patton's motion for an extension of time (Docket No. 1) will be DENIED. See Ramirez v. United States, 461 F. Supp.

¹ The matter has been filed as a habeas action purely for the administrative convenience of the Court.

2d 439, 440-41 (E.D. Va. 2006) (citing cases). The matter will be DISMISSED for lack of jurisdiction.

The Clerk will be DIRECTED to forward to Patton the form for filing a petition under 28 U.S.C. § 2254. Any such petition for a writ of habeas corpus must conform to the form prescribed by the rules governing such motions and be sworn to under penalty of perjury. See Rule 2(c), Rules Governing § 2254 Cases in U.S. District Courts. Patton is advised that § 2254 petitions are subject to a one-year statute of limitations and a restriction against second or successive petitions. See 28 U.S.C. §§ 2254(b), (d).

The Clerk is DIRECTED to send a copy of this Memorandum Opinion to Patton.

And it is so ORDERED.

/s/

REP

Robert E. Payne
Senior United States District Judge

Date: May 14, 2009
Richmond, Virginia